

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

-----X	:	
<i>In re</i>	:	Chapter 11
	:	
Patriot Coal Corporation, <i>et al.</i> ,	:	Case No. 12-51502-659
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X	:	

**OBJECTION OF ARCH COAL, INC., ARK LAND COMPANY,
ARK LAND KH, INC. AND ALLEGHENY LAND COMPANY
TO DEBTORS' MOTION FOR AUTHORIZATION TO (I) ASSUME OR
(II) REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Arch Coal, Inc. ("Arch Coal"), Ark Land Company ("Ark Land"), Ark Land KH, Inc. ("Ark KH") and Allegheny Land Company ("Allegheny", collectively, "Arch"), by and through their undersigned counsel, hereby submit this objection (the "Objection") to the Debtors' Motion For Authorization To (I) Assume Or (II) Reject Unexpired Leases Of Nonresidential Real Property [D.I. 1995] (the "Motion") filed by Patriot Coal Corporation ("Patriot") and its subsidiaries that are debtors and debtors in possession (collectively, the "Debtors"). In support of its Objection Arch respectfully states as follows:

Basis for Objection

1. By the Motion, the Debtors seek an order approving the assumption pursuant to Section 365 of the Bankruptcy Code of various nonresidential real property leases and subleases. The Debtors are expressly attempting to assume such leases without any (i) payment agreements, (ii) royalty agreements, including overriding royalty agreements, (iii) assignment and assumption agreements, (iv) purchase and other acquisition agreements, (v) sale agreements and (vi) purchase option agreements, including but not limited to the agreements set forth on Schedule C

to the Proposed Order (each as defined in the Motion), notwithstanding the fact that certain of such agreements are integrated with and not severable from the leases that the Debtors are attempting to assume. A Debtor may only assume executory contracts and unexpired leases *cum onere*; it may not assume the benefits in such leases and leave behind obligations that are integrated with and not severable from such rights—obligations that are part of the same business transaction as the Debtors’ rights under such leases.

2. The issue of whether two of the leases that the Debtors seek authorization to assume are integrated with and not severable from the Debtors’ obligations under various of the assignment agreements and royalty agreements listed in Schedule C to the Proposed Order is currently being litigated by Arch and the Debtors in one of the adversary proceedings pending in these chapter 11 cases (the “STB Adversary Proceeding”)—*Robin Land Company, LLC v. STB Ventures, Inc.* Case No. 12-04355 (Bankr. E.D. Mo.). As discussed further below, in the STB Adversary Proceeding, Robin Land Company, LLC (f.k.a. Robin Land Company, “Robin Land”), one of the Debtors in these chapter 11 cases, has sought a declaratory judgment that an Overriding Royalty Agreement dated as of October 31, 1994 by and among Ark Land and STB Ventures, Inc. (“STB”, such agreement the “STB Override Agreement”)¹ is not integrated with and is severable from any other agreement, including the following two nonresidential real property leases, which the Debtors seek authorization to assume pursuant to the Motion: (i) the Combined, Amended and Restated Coal Lease dated October 31, 1994 between Lawson Heirs, Incorporated (“Lawson Heirs”) and Ark Land (as amended, the “Lawson Heirs Lease,”)² and (ii) the Combined, Amended and Restated Coal Lease dated October 31, 1994 between Kelly-

¹ The STB Override Agreement is attached to the complaint filed by Robin Land in the STB Adversary Proceeding (the “Complaint”) [STB Adversary Proceeding D.I. 1] as Exhibit A.

² A copy of the Lawson Heirs Lease was filed under seal as Exhibit D to the Complaint [STB Adversary Proceeding D.I. 1, 2].

Hatfield Land Company (“Kelly-Hatfield”) and Ark Land (as amended, the “Kelly-Hatfield Lease”).³

3. The Kelly-Hatfield Lease and the Lawson Heirs Lease may not be assumed unless Robin Land also assumes all of the integrated obligations that form part of the same business transaction as the Debtors’ rights under such leases, including Robin Land’s contractual obligations to pay the relevant portion of the royalty required to be paid under the STB Override Agreement (the “STB Override”).⁴ Moreover, given that this issue is already being addressed in the STB Adversary Proceeding, brought by the Debtors, it is improper and a waste of judicial resources for the Debtors to attempt to assume the Kelly-Hatfield Lease and the Lawson Heirs Lease through this Motion.⁵

Procedural History

4. On July 9, 2012, Patriot and its affiliated Debtors commenced with the Untitled States Bankruptcy Court for the Southern District of New York (the “SDNY Bankruptcy Court”) voluntary cases under chapter 11 of the Bankruptcy Code. On December 19, 2012, the SDNY Bankruptcy Court entered an order transferring the Debtors’ chapter 11 cases to this Court. The Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

³ A copy of the Kelly-Hatfield Lease was filed under seal as Exhibit E to the Complaint [STB Adversary Proceeding D.I. 1, 2].

⁴ This Objection focuses primarily on the integration of the of the STB Override Agreement with the Kelly-Hatfield Lease and the Lawson Heirs Lease, which leases Robin Land proposes to assume pursuant to the Motion. Arch reserves the right to argue in the STB Adversary Proceeding that the STB Override Agreement, the Kelly-Hatfield Lease and/or the Lawson Heirs Lease are integrated with any and all of the broader STB Transaction and/or Magnum Transaction documents (each as defined below) (including leases assigned *in toto* by Arch to the Debtors pursuant to the Magnum Transaction that may be assumed by the Debtors pursuant to the Motion).

⁵ The Debtors have indicated that they brought this Motion with respect to the Kelly-Hatfield Lease and the Lawson Heirs Lease due to the deadline for assumption of nonresidential real property leases under Section 365(d)(4) of the Bankruptcy Code. However, this is a problem of the Debtors’ own making; the Debtors’ could have sought Lawson Heirs’ and Arch’s consent to the extension of such deadline prior to filing the Motion. To date, the Debtors have not sought the consent of Lawson Heirs to the extension of the deadline to assume the Lawson Heirs Lease. Subject to the other considerations raised in this Objection, as described below, Arch is willing to consider consenting to an extension of the time to assume the Kelly-Hatfield Lease.

5. On January 15, 2013, the Debtors filed the Motion, which, among other things, seeks authority to assume the following leases: (i) the Lawson Heirs Lease (identified in the Motion as LMS1723); (ii) the Kelly-Hatfield Lease (identified in the Motion as LMS0138); and (iii) the Sublease dated as of December 29, 2006 by and between Allegheny and Robin Land (identified in the Motion as LND 817).⁶

Facts Relevant to this Objection

6. Arch has various relationships with the Debtors, and many of those relationships stem from the transactions contemplated by the December 31, 2005 Purchase and Sale Agreement between Arch Coal and Magnum Coal Company (n.k.a. Magnum Coal Company, LLC, “Magnum”, such agreement, as amended, the “Magnum PSA” and such transaction, the “Magnum Transaction”)⁷ pursuant to which Arch Coal sold its interests in Robin Land, Apogee Coal Company (n.k.a. Apogee Coal Company, LLC, “Apogee”), Catenary Coal Company, LLC, Hobet Mining, LLC and TC Sales Company, LLC, each now debtors in the Debtors’ jointly administered chapter 11 cases (such Debtors, the “Transferred Debtors”), to Magnum. Patriot acquired Magnum and the Transferred Debtors in a subsequent 2008 transaction.

7. Ark Land and Apogee acquired their interests in the premises demised under the Kelly Hatfield Lease and the Lawson Heirs Lease (the “Kelly-Hatfield Premises” and the “Lawson Heirs Premises”, respectively, and together, the “Premises”) pursuant to an October 31, 1994 Asset Purchase Agreement (the “STB PSA”)⁸ with STB, Eagle Minerals Company, Guyan

⁶ This sublease was amended and restated by the Amended and Restated Sublease dated as of March 13, 2007 by and between Allegheny Land Company and Robin Land Company, LLC (the “Allegheny Sublease”). The Allegheny Sublease is not identified in the Motion.

⁷ A true and correct copy of the Magnum PSA (excluding the Schedules and Exhibits thereto) was filed as exhibit 2 to the Answer (the “Answer”) attached as Exhibit B to the Motion to Intervene (as defined below) [STB Adversary Proceeding D.I. 15].

⁸ A copy of the STB PSA was filed under seal as Exhibit B to the Complaint [STB Adversary Proceeding D.I. 1, 2].

Mining Company, and Guyan Equipment Company (collectively, the “STB Sellers”) whereby the STB Sellers sold certain assets to Ark Land and Apogee (the “STB Transaction”). Such assets included the STB Sellers’ interests in the Premises. On the same day that the STB PSA was executed, the Premises were demised to Ark Land pursuant to the Kelly-Hatfield Lease and the Lawson Heirs Lease. Also on that same day, October 31, 1994, as “additional consideration” under the STB PSA (making up the majority of the purchase price paid by Ark Land under the STB PSA) Ark Land executed the STB Override Agreement, which agreement required Ark Land to pay the STB Override with respect to coal mined and sold from the Premises. See e.g., STB PSA § 2.02(b)(i). The parties to the STB Transaction understood that the STB PSA, the demise of the Kelly-Hatfield Premises, the demise of the Lawson Heirs Premises and the STB Override Agreement constituted part of the same business transaction.

8. As discussed above, subsequent to the STB Transaction, on December 31, 2005, Arch Coal and Magnum executed the Magnum PSA pursuant to which Arch Coal sold its interests in the Transferred Debtors to Magnum. As part of the Magnum Transaction, on December 30, 2005, Ark Land and Robin Land executed an Assignment and Assumption Agreement dated as of December 30, 2005 (the “Assignment and Assumption Agreement”),⁹ pursuant to which Ark Land assigned the Lawson Heirs Lease to Robin Land, and Robin Land agreed to assume the obligation to pay the STB Override with respect to the coal mined and sold from the Lawson Heirs Premises. Also in connection with the Magnum Transaction, on the same day as the execution of the Magnum PSA – December 31, 2005 – Ark Land and Robin Land executed a Partial Assignment and Assumption of Lease (the “Initial Partial

⁹ A copy of the Assignment and Assumption Agreement was filed under seal as Exhibit F to the Complaint [STB Adversary Proceeding D.I. 1, 2].

Assignment”),¹⁰ whereby Ark Land assigned a portion of the Kelly-Hatfield Premises to Robin Land and Robin Land agreed to pay the STB Override “to the extent that the STB Override applie[d] to coal mined from the Assigned Lease Portion of the Premises”. See Initial Partial Assignment § 2. The result of these assignments was that, as with the STB Transaction, the obligation to pay the STB Override remained tied to the coal properties on which it was based—Robin Land became obligated to pay the STB Override with respect to the Lawson Heirs Premises and the assigned portion of the Kelly-Hatfield Premises.

9. Subsequent to the execution of the Initial Partial Assignment, in 2007, Ark Land assigned an additional portion of the Kelly-Hatfield Premises to Robin Land. In connection with the assignment of such additional premises and to acknowledge the fact that Ark KH had become the lessor with respect to the Kelly-Hatfield Premises as successor by merger of Kelly-Hatfield, Ark Land and Robin Land executed the Amended and Restated Partial Assignment and Assumption of Lease dated May 22, 2007 between Ark Land, Ark KH and Robin Land (the “Amended and Restated Partial Assignment”).¹¹ The Amended and Restated Partial Assignment amended and restated the Initial Partial Assignment and contained and confirmed Robin Land’s agreement to pay the STB Override with respect to the entire portion of the Kelly-Hatfield Premises assigned to Robin Land—both the portion of such premises assigned pursuant to the Initial Partial Assignment and the additional portion of such premises assigned pursuant to the Amended and Restated Partial Assignment—again tying the holder of the relevant portion of the Kelly-Hatfield Premises to the obligation to pay the relevant portion of the STB Override. See Amended and Restated Partial Assignment § 3.

¹⁰ A true and correct copy of the Initial Partial Assignment was filed as exhibit 3 to the Answer [STB Adversary Proceeding D.I. 15].

¹¹ A copy of the Amended and Restated Partial Assignment was filed as Exhibit B to the Certification of Joseph Bunn, filed in connection with the Motion to Dismiss (as defined below) [STB Adversary Proceeding D.I. 8].

10. On August 10, 2012, Robin Land filed the STB Adversary Proceeding against STB seeking a declaration that (i) the STB Override Agreement is a non-executory contract for purposes of Section 365 of the Bankruptcy Code; and (ii) that the STB Override Agreement is not integrated with, or is severable from, any other agreement. Robin Land named STB as a defendant in the proceeding and served STB with the Complaint; Arch was neither named in nor served with the Complaint. On September 17, 2012, STB filed a motion to dismiss the STB Adversary Proceeding because of Robin Land's failure to join Ark Land and Ark KH as necessary parties [STB Adversary Proceeding D.I. 8] (the "Motion to Dismiss"). On October 22, 2012, Robin Land filed its opposition to the Motion to Dismiss [STB Adversary Proceeding D.I. 12] (the "Debtor's Opposition to the Motion to Dismiss"). On November 28, 2012, Arch Coal, Ark Land and Ark KH filed a Motion to Intervene in the STB Adversary Proceeding [STB Adversary Proceeding D.I. 15] (the "Motion to Intervene"). On December 10, 2012 the Debtors filed a Response to the Motion to Intervene [STB Adversary Proceeding D.I. 18], but did not object in principle to allowing Arch Coal, Ark Land and Ark KH to intervene in the STB Adversary Proceeding. Noting that intervention by Arch Coal, Ark Land and Ark KH would moot its Motion to Dismiss, on January 3, 2013, STB filed a withdrawal of its Motion to Dismiss [STB Adversary Proceeding D.I. 23]. As of the date hereof, Robin Land, Arch and STB are negotiating a consensual order pursuant to which Arch Coal, Ark Land and Ark KH will be permitted to intervene in the STB Adversary Proceeding and STB's Motion to Dismiss will be denied, thereby permitting the STB Adversary Proceeding to go forward.

11. The issue of whether the STB Override Agreement is integrated with any other instrument—including the Kelly-Hatfield Lease and the Lawson Heirs Lease—is the subject of

the Complaint and will be litigated in the STB Adversary Proceeding.¹² The Complaint seeks a declaratory judgment that the STB Override Agreement is not integrated with or is severable from any other agreement, and specifically references various of the agreements discussed above, including the Kelly-Hatfield Lease, the Lawson Heirs Lease, the STB PSA and the Assignment and Assumption Agreement. Each of the STB Override Agreement, the STB PSA, the Assignment and Assumption Agreement, the Magnum PSA, the Initial Partial Assignment and the Amended and Restated Partial Assignment are listed in Schedule C to the Proposed Order to the Motion. Accordingly, by the Motion, the Debtors are effectively seeking a declaration that such agreements and all of the obligations contained therein are severable from the Kelly-Hatfield Lease and the Lawson Heirs Lease—the very result that Robin Land is already seeking in the STB Adversary Proceeding.

Argument

A. Robin Land May Not Assume The Kelly-Hatfield Lease Or The Lawson Heirs Lease Without Also Assuming Its Obligations Under The STB Override Agreement And Curing Its Defaults Thereunder.

12. Robin Land may not assume the Kelly-Hatfield Lease or the Lawson Heirs Lease without also assuming all of the obligations that form part of the same business transaction as Robin Land's rights under such leases, including Robin Land's contractual obligations to pay the relevant portion of the STB Override. It is well established that a debtor may only assume an executory contract under Section 365 of the Bankruptcy Code *cum onere*. See e.g., United States v. Gerth, 991 F.2d 1428, 1432-33 (8th Cir. 1993); In re Steelship Corp., 576 F.2d 128, 132 (8th Cir. 1978). The Kelly-Hatfield Lease and the Lawson Heirs Lease may only be assumed

¹² In addition to the Debtors' declaratory judgment action, it is anticipated that counterclaims against the Debtors, including counterclaims related to Robin Land's failure to pay the STB Override, will be litigated in the STB Adversary Proceeding.

together with Robin Land's obligations under the STB Override Agreement and following the cure of Robin Land's past defaults under such agreement.

13. Whether the rights and obligations under multiple instruments are deemed a single contract for purposes of Section 365 of the Bankruptcy Code turns on the state law that governs such instruments. See e.g., In re Adelpia Bus. Solutions, Inc., 322 B.R. 51, 54 (Bankr. S.D.N.Y. 2005) (applying Missouri law to determine to determine severability of leases that contained Missouri choice-of-law provisions); In re S.E. Nichols, Inc., 120 B.R. 745, 748 (Bankr. S.D.N.Y. 1990) ("For purposes of Section 365, interpretation of the legal status of lease agreements is governed by state law."). Each of the Kelly-Hatfield Lease, the Lawson Heirs Lease and the STB PSA contain express choice of law provisions indicating that West Virginia law governs such instruments. Kelly-Hatfield Lease § 21; Lawson Heirs Lease §21; STB PSA § 9.11. The STB Override Agreement does not have an express choice of law clause.

14. Under West Virginia law, "a written agreement constituting a single contract need not be encompassed in one instrument as between contracting parties. It may be comprised of two or more instruments and be enforceable as a whole, if the relationship between the several papers is clearly established." Amherst Land Co., Corp. v. United Fuel Gas Co., 140 W. Va. 389, 395 (W. Va. 1954). See also D.H. Pritchard Contractor, Inc. v. Nelson, 147 F. 2d 939, 942 (4th Cir. 1945) (holding that, with respect to a dispute regarding coal mined from West Virginia, several instruments executed at different times and between different parties were an integrated contract such that the breach of one such instrument was the breach of another such instrument and stating that "[i]f made at the same time, in relation to the same subject matter, [separate written agreements] may be read together as one instrument [and that] [t]his rule obtains even when the parties are not the same, if the several contracts were known to all the parties.");

Ashland Oil, Inc. v. Donahue, 159 W. Va. 463, 469 (W. Va. 1976) (finding two agreements that, on their face, could not be read independently constituted a single integrated business relationship).¹³

15. It is clear from the face of the STB Transaction documents and the Magnum Transaction documents that the parties intended Robin Land’s obligation to pay the relevant portion of the STB Override to be integrated with and not severable from Robin Land’s right to mine the Lawson Heirs Premises and the relevant portions of the Kelly-Hatfield Premises. As set forth, *inter alia*, in the relevant agreements:

- (a) Pursuant to the STB PSA, delivery of the STB Override Agreement by Ark Land was “additional consideration” for the transfer of the Acquired Assets (as defined in the STB PSA), which assets included the Kelly-Hatfield Lease and the Lawson Heirs Lease. STB PSA § 2.02(b)(i).¹⁴
- (b) The entire agreement clause of the STB PSA refers to the STB PSA and “the documents referred to herein”—which documents include the STB Override Agreement, the Kelly-Hatfield Lease and the Lawson Heirs Lease—as the “entire agreement” of the parties. STB PSA § 9.07.¹⁵

¹³ Various of the instruments executed as part of the Magnum Transaction reference New York law and Delaware law. Like West Virginia law, New York law and Delaware law each look to the intent of the parties to determine whether the rights and obligations contained in multiple instruments form part of the same transaction. See e.g., TVT Records v. Island Def Jam Music Grp., 412 F.3d 82, 89 (2d Cir. 2005); This Is Me, Inc. v. Taylor et al., 157 F.3d 139, 143 (2d Cir. 1998); Commander Oil Corp. v. Advance Food Serv. Equip., 991 F.2d 49, 52-53 (2d Cir. 1993); Liberty USA Corp. v. Buyer’s Choice Ins. Agency, LLC, 386 F. Supp. 2d 421, 425 (S.D.N.Y. 2005); Nau v. Vulcan Rail & Constr. Co., 286 N.Y. 188, 197 (1941); In re Teligent, Inc., 268 B.R. 723, 728 (Bankr. S.D.N.Y. 2001) (construing agreements governed by Delaware law); E.I. du Pont de Nemours & Co. v. Shell Oil Co., 498 A.2d 1108, 1115 (Del. 1985).

¹⁴ To be clear, pursuant to the STB PSA, the STB Sellers sold their interests in the Premises to Ark Land and Apogee. The Kelly-Hatfield Lease and the Lawson Heirs Lease are novation leases that were executed concurrently with the STB PSA and the STB Override Agreement to effectuate such transfer. The STB Sellers were never parties to the Kelly-Hatfield Lease or the Lawson Heirs Lease, but were parties to the various instruments that were novated by the Kelly-Hatfield Lease and the Lawson Heirs Lease.

¹⁵ The explicit reference to the inclusion of the STB Override Agreement, the Kelly-Hatfield Lease and the Lawson Heirs Lease in the entire agreement clause of the STB PSA is clear evidence of the parties’ intent that all such documents form part of the same business transaction. Consistent with that clause, the entire agreement clause in the STB Override Agreement specifies that the STB Override Agreement is only integrated “in respect of the Overriding Royalty specified [t]herein”, not that the STB Override Agreement is a standalone integrated instrument in and of itself. STB Override Agreement § 8.

- (c) The STB Override Agreement expressly references the STB PSA, the Kelly-Hatfield Lease and the Lawson Heirs Lease, noting that it was anticipated that the Premises would be demised to Ark Land by two novation leases from Kelly-Hatfield and Lawson Heirs dated the same day as the STB PSA. STB Override Agreement First and Second Whereas Clauses. The Kelly-Hatfield Lease and the Lawson Heirs Lease are such novation leases.
- (d) The “Now, Therefore” Clause of the STB Override Agreement expressly states that the STB Override Agreement is provided in consideration of the mutual covenants and agreements contained in the STB Override Agreement and the STB PSA. STB Override Agreement Now, Therefore Clause.
- (e) The STB Override Agreement incorporates terms of the Kelly-Hatfield Lease and the Lawson Heirs Leases by reference. The STB Override is a royalty assessed on coal mined and sold from the Premises—the Kelly-Hatfield Premises and the Lawson Heirs Premises—and the STB Override Agreement states that the “[t]erms and conditions within the [Kelly-Hatfield and Lawson Heirs] Leases shall govern as to royalty determination, late payment penalties, and all similar purposes.” STB Override Agreement § 3.
- (f) Both the Kelly-Hatfield Lease and the Lawson Heirs Lease reference the STB PSA. See e.g., Kelly-Hatfield Lease Fifth and Ninth Whereas Clauses; Lawson Heirs Lease Eighteenth Whereas Clause.
- (g) Pursuant to the Assignment and Assumption Agreement, the agreement by which Robin Land took an assignment of the Lawson Heirs Lease, Robin Land agreed to pay the portion of the STB Override related to the Lawson Heirs Premises and agreed to indemnify Ark Land for any failure to honor such obligation. See Assignment and Assumption Agreement § 2; Schedule 1.
- (h) Pursuant to the Initial Partial Assignment (which was subsequently amended and restated by the Amended and Restated Partial Assignment), Robin Land “agree[d] to perform the duties and obligations of [Ark Land] contained in or arising under the [Kelly-Hatfield] Lease in accordance with the terms and conditions thereof, and [Robin Land] also assume[d] the obligation to pay the ‘STB Override’ to the extent that the STB Override applies to coal mined from the Assigned Lease Portion of the Premises.” In the Initial Partial Assignment, Robin Land also agreed to Indemnify Ark Land for any failure by Robin Land to perform such obligations. Initial Partial Assignment § 2.
- (i) Likewise, in the Amended and Restated Partial Assignment, Robin Land “agree[d] to perform the duties and obligations of [Ark Land] contained in or arising under the [Kelly-Hatfield] Lease in accordance with the terms and conditions thereof, and [Robin Land] also assume[d] the obligation to pay the ‘STB Override’ as defined and identified in that certain Overriding Royalty Agreement dated October 31, 1994 between [Ark Land] and STB Ventures, Inc.

and as assigned to [Robin Land] by that certain Assignment and Assumption Agreement dated December 30, 2005 between [Ark Land] and [Robin Land] to the extent that the STB Override applies to coal mined from the Assigned Lease Portion of the Premises.” In the Amended and Restated Partial Assignment, Robin Land also agreed to Indemnify Ark Land for any failure by Robin Land to perform such obligations. Amended and Restated Partial Assignment § 3.¹⁶

16. It is also clear from the parties’ actions under the STB Transaction documents and the Magnum Transaction documents that the parties intended Robin Land’s obligation to pay the relevant portion of the STB Override to be integrated with and not severable from Robin Land’s right to mine the Lawson Heirs Premises and the relevant portions of the Kelly-Hatfield Premises. Each time that Ark Land assigned the Lawson Heirs Lease or a portion of the Kelly-Hatfield Lease, Ark Land required Robin Land to assume the obligation to pay the relevant portion of the STB Override. Moreover, the parties’ payment and other records with respect to the STB Override will demonstrate that the parties have always viewed the STB Override in terms of the coal mined and sold from the assigned portion of the Kelly-Hatfield Premises and the Lawson Heirs Premises.

17. It is clear on the face of the agreements referenced above and based on the parties’ actions under such agreements that the parties to the STB Transaction and the Magnum Transaction intended Robin Land’s obligations to pay the relevant portion of the STB Override to be integrated with and not severable from its right to mine the Lawson Heirs Premises and the relevant portion of the Kelly-Hatfield Premises. The Debtors have respond that such rights and obligations are not integrated by bringing the STB Adversary Proceeding to that effect. Arch

¹⁶ In addition to Robin Land’s indemnity obligations with respect to the STB Override contained in the Assignment and Assumption Agreement, the Initial Partial Assignment and the Amended and Restated Partial Assignment, Magnum has a duty to indemnify Arch Coal and its affiliates with respect to obligations of Robin Land generally—including with respect to the STB Override—under the Magnum PSA. See, e.g., Magnum PSA § 10.3(d). Arch Coal, Ark Land and Ark KH have filed proofs of claim against Robin Land and Magnum with respect to such indemnity obligations. STB has asserted that Arch Coal guarantees payment of the STB Override by Robin Land, and such proofs of claim filed by Arch Coal, Ark Land and Ark KH assert contingent claims for indemnification against Robin Land and Magnum in the event that such entities or their affiliates are required to honor any of Robin Land’s obligations under the STB Override Agreement.

requests that this dispute be litigated in the STB Adversary Proceeding, which litigation was previously commenced by the Debtors, and which litigation can accommodate discovery on the issue of the intent of the various parties.

18. As discussed above, Arch believes that Robin Land's obligation to pay the relevant portions of the STB Override is integrated with and not severable from Robin Land's rights under the Kelly-Hatfield and Lawson Heirs Leases. Upon information and belief, Robin Land has not paid the relevant portion of the STB Override since the filing of its bankruptcy petition, and accordingly, Robin Land is in default of its obligations under the STB Override Agreement. Under Section 365(b)(1)(A) of the Bankruptcy Code, a debtor may not assume an executory contract or unexpired lease that it has defaulted under unless the debtor "cures, or provides adequate assurance that [it] will promptly cure, such default . . ." 11 U.S.C. § 365(b)(1)(A). Because Robin Land's obligation to pay the relevant portion of the STB Override is integrated with and not severable from its right to mine the Lawson Heirs Premises and the relevant portion of the Kelly-Hatfield Premises, Robin Land may not assume the Kelly-Hatfield Lease or the Lawson Heirs Lease unless it cures its defaults under the STB Override Agreement, which defaults Robin Land does not propose to cure. Arch objects to the assumption of the Kelly-Hatfield Lease and the Lawson Heirs Lease to the extent that Robin Land does not propose to cure its existing defaults under the STB Override Agreement.

19. If the Court permits Robin Land to assume the Kelly-Hatfield Lease and/or the Lawson Heirs Lease without requiring Robin Land to cure its existing defaults under the STB Override Agreement, Arch respectfully requests that the Court order Robin Land to pay the amount required to cure its existing defaults under the STB Override Agreement—both the amount that is currently in default and the amounts that will constitute defaults on a rolling basis

going forward—into escrow as adequate assurance of Robin Land’s ability to cure such defaults when the issue of the integration of Robin Land’s promise to pay the relevant portion of the STB Override and its rights under the Lawson Heirs and Kelly Hatfield Leases is finally determined.

B. Robin Land May Not Assume The Kelly-Hatfield Lease Without Also Assuming Its Obligations With Respect To The Spruce Fork Surface Property Under The Amended And Restated Partial Assignment.

20. Robin Land should not be allowed to assume the Kelly-Hatfield Lease without also assuming its obligation to make payments with respect to the Spruce Fork Surface Property (as defined in the Amended and Restated Partial Assignment) as contemplated by Paragraph 4 of Amendment No. 1 to the Kelly-Hatfield Lease dated as of November 20, 2000 (the “First Amendment to the Kelly-Hatfield Lease”) and by Section 6 of the Amended and Restated Partial Assignment. Arch does not understand Robin Land to be attempting to avoid such obligation because Robin Land seeks to assume the Kelly-Hatfield Lease as amended, and the obligation to make payments with respect to the Spruce Fork Surface Property is addressed in the First Amendment to the Kelly-Hatfield Lease. However, because Robin Land seeks to assume the Kelly-Hatfield Lease without also assuming the Amended and Restated Partial Assignment, and because the Amended and Restated Partial Assignment contains an agreement by Robin Land to make payments with respect to the Spruce Fork Surface Property, any order approving the assumption of the Kelly-Hatfield Lease should clarify that Robin Land is also assuming its payment obligations with respect to the Spruce Fork Surface Property.

C. Robin Land’s Proposed Cure Of The Kelly-Hatfield Lease, Generally.

21. Except with respect to the above issue raised with regard to the STB Override, Arch generally does not object to the proposed cure amount for the Kelly-Hatfield Lease. Arch asked for and received from the Debtors a description of the proposed \$1,134,388.49 cure

amount for the Kelly-Hatfield Lease, and Arch understands that such amount is comprised of \$579,489.92 of prepetition royalties owed to Arch and \$554,898.57 of estimated property taxes owed with respect to the Kelly-Hatfield Premises through December 31, 2012. Provided that Robin Land continues to pay the royalties owed under the Kelly-Hatfield Lease for the post-petition period in the ordinary course of business—including royalties for the months of December 2012 and January 2013, which royalties are not due as of the date hereof—Arch agrees that \$579,489.92 of prepetition royalties are due under the Kelly-Hatfield Lease. Because of the peculiar processes by which the various relevant taxing authorities compile and invoice property tax receipts, Arch has not billed Robin Land for all amounts that are payable for property taxes under the Kelly-Hatfield Lease. Arch agrees that the \$554,898.57 amount proposed by the Debtors is a reasonable estimate of Robin Land's property tax burden under the Kelly-Hatfield Lease through December 31, 2012. Provided that the Debtors will work with Arch to reconcile Robin Land's actual tax burden through December 31, 2012 and any tax burden of Robin Land for the period from January 1, 2013 through the effective date of any assumption of the Kelly-Hatfield Lease, which obligations Arch understands Robin Land would be assuming by assuming the Kelly-Hatfield Lease, Arch does not object to the proposed cure amount with respect to property taxes under the Kelly-Hatfield Lease.

D. The Date of the Allegheny Sublease Should Be Clarified.

22. As noted above, the Debtors have noticed the assumption of the Allegheny Sublease. The Allegheny Sublease is identified on Schedule A to the Proposed Order as a December 29, 2006 Sublease between Allegheny and Robin Land. This December 29, 2006 instrument was amended and restated by a March 17, 2007 Amended and Restated Sublease between Allegheny and Robin Land—as defined above, the Allegheny Sublease. Allegheny

does not object to the assumption of the Allegheny Sublease, provided that any order approving the assumption of the Allegheny Sublease reflects the assumption of the currently operative instrument—the March 17, 2007 Allegheny Sublease. Arch understands from communications with the Debtors that any such order will reflect the assumption of such instrument.

E. Arch’s Right to Object to Any Proposed Future Assignment of the Allegheny Sublease or the Kelly-Hatfield Lease Should Be Preserved.

23. In the Motion, the Debtors seek to expressly preserve the right to sell or assign the Allegheny Sublease and the Kelly-Hatfield Lease at a later date pursuant to Section 365(f) of the Bankruptcy Code. This concept is embodied in the fifth Ordered paragraph of the Proposed Order (as defined in the Motion), which clarifies that such right may only be exercised if the conditions of Section 365(f)(2)(B) of the Bankruptcy Code are satisfied. The Proposed Order should be further clarified to expressly provide that any proposed assignment of the Allegheny Sublease or the Kelly-Hatfield Lease shall be (i) on notice to the Court and Arch such that (ii) Arch shall have a reasonable opportunity to raise any objections to such assignment to the Court and (iii) that Arch shall be entitled to raise any applicable objections, including that the requirements of Section 365(b)(2)(B) of the Bankruptcy Code are not satisfied, at such time. As Robin Land has not proposed to assign the Allegheny Sublease or the Kelly-Hatfield Lease at this time, it is unclear what objections, if any, Arch will have to such assignments, if any, and Arch should be given an opportunity to raise any such objections at the appropriate time.

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Request for Relief

WHEREFORE, for the reasons set forth herein, Arch respectfully requests that this Court: (i) deny the Motion insofar as the Motion seeks authorization for Robin Land to assume the Kelly-Hatfield Lease and the Lawson Heirs Lease; (ii) grant the relief requested herein; and (iii) grant such other and further relief as it deems just and proper.

Dated: St. Louis, Missouri
January 22, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via first class, United States mail, postage prepaid and/or electronic notice on January 22, 2013, to:

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9. Chambers of the Honorable Kathy A. Surratt-States
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St. Louis, MO 63102
10. All creditors and parties in interest that are receiving electronic notice in this case.

/s/John J. Hall _____